Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Docket No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST 1999

EMANUEL HAZANI,

Petitioner,

v.

OKI ELECTRIC INDUSTRY CO. LTD., OKI AMERICA, INC., SAMSUNG GROUP, SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR, INC., MITSUBISHI ELECTRIC CORPORATION, MITSUBISHI ELECTRONICS AMERICA, INC., NEC CORPORATION, and NEC ELECTRONICS, INC.,

Respondents

On Petition For Writ of Certiorari to the United States Court of Appeals for the Federal Circuit.

PETITION FOR WRIT OF CERTIORARI

Emanuel Hazani
Pro se
1210 Sesame Drive
Sunnyvale, CA 94087
(408) 737-1877

QUESTIONS PRESENTED

(1) Whether the time to appeal an interlocutory district court decisions runs from the time of each interlocutory decision or from the time of the district court's final decision on the merit in a patent infringement case.

(2) Assuming the interpretation of the last Order of a district court as interpreted by Respondents and by the Federal Circuit appeal court is correct, the question is: whether a district court's judge abused his discretion when he declined to review my Fed. R. Civ. P. 60(b) motion ("rule 60(b) motion") which was timely filed and was based *inter alia* on "excusable neglect", but the rule 60(b) motion was not accompanied by a motion for leave to file it, because the Federal Rules of Civil Procedures have no such requirements?

(3) Whether seeking leave of court within a brief of a rule 60(b) motion constitutes a proper form for a *pro se* party, seeking leave of court to file a reply brief to a motion for summary judgement for patent invalidity?

(4)Assuming my interpretation of the last Order of a district court as interpreted by me is correct, and the district court judge did review the Fed. R. Civ. P. 60(b) motion and assuming that he did review my reply brief in opposition to Respondents patent invalidity motion from which he quotes, but not to let me file an opposition to Respondents motion for summary judgement of non-infringement of claim 14 of the patent in suite, did the Federal Circuit abused its discretion by not considering my appeal to review the district court's decisions, and instead treated my request for review as a petition for writ of mandamus which is judged by another standard?

(5) Does a filing of a rule 60(b) motion within sixty days of a district court's order tolls the time for filing an appeal from a district court under Fed. R. Civ. P. 4(a) ("rule 4(a)") as is the case law by at least eight federal circuit courts, and by unpublished opinions of the Federal Circuit, or is the appeal court panel in the case below correct and my filing for an appeal was untimely?

LIST OF PARTIES

All parties appear in the caption of the case on the cover sheet.

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THE ORDER BELOW

The order of the United States court of appeal appear at Appendix A and it is unpublished.

JURISDICTION

The date on which the United State Court of Appeal for the Federal Circuit decided my case was May 14, 1999. This court has jurisdiction to review appeals from the United States Court of Appeals under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUARY PROVISIONS INVOLVED

Federal Rules of Civil Procedure (below referred to as "F.R.C.P") 6(b) and 60(b),

F.R.C.P. 6(b) states in part.:

> "(b) **Enlargement**. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules . . 60(b), . . . except to the extend and under the condition stated in them.".

F.R.C.P. 60(b) States in Part:

> "(b) Mistakes; Inadvertence; Excusable Neglect; . . .On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgement, order, or proceeding for the following reasons: (i) mistake, inadvertence, surprise, or excusable neglect;".

STATEMENT OF THE CASE

The underlying case in the district court was a patent infringement litigation under 35 U.S.C., in which the Respondents were accused of infringing my U.S. Patent No. 5,166,904 ("the '904 patent"). An invention that cover a new semiconductor memory cell including a capacitor that has textured surface which reduces the physical space in which to store electronic charge which represent computer data. Because the memory cells' capacitor cover more than 80% of memory chips the invention enabled the reduction of production cost tremendously, so that between 1994 and mid 1996, the prices for Dynamic Random Access Memory ("DRAM") chips dropped by about 30 folds. DRAM is an important commodity in computers and other information processing equipment, which are the engine of today's economy. Alan Greenspan testified before congress in late 1988 that innovations in integrated circuits ("I.C.") are the reason for high productivity of the U.S. economy, which grew in the face of troubled foreign economies. I am aware of no other I.C. invention that had such a big effect on price and productivity.

A chronology of some of the events leading to the district court's ruling of invalidity of the patent is found in Appendix C. In short , the District Court allowed the Respondents to file three motion for summary judgement at the same time, even though I appeared *pro se* and I am not an attorney.

Prior to the filing of Respondents three motion, I filed a motion of change venue from New Jersey to California where I live, before the proceedings in the district court which were put on stay because of an investigation of USITC will begin. During the same time period I discovered that an attorney in the law firm who formerly represented me in the case had a brother attorney employed by NEC's leading law firm in the suite. Under the Third Circuit law, I was compelled to file a motion for disqualification of attorneys "lest the right to move for disqualification may be waved in not timely made". Host Mariott Corporation v. Fast food Operation, Inc., 891 F. Sup. 1002, 1010 (D.N.J. 1995) (citing more).

Despite my attempts to meet the District Court's 14 days reply time to oppose Respondents' motions, I had to ask for extensions of time. I did get three extensions of time which average to be one per each of Respondents motions for summary judgement.

On August 13, 1999, the district court granted Respondents motions before I had a chance to file briefs in opposition. In effect it was a default judgement. After I filed timely motions for extension of time (under F.R.A.P 6(b)), to file a motion for reconsideration, the district court considered them and issued a Memorandum and Order of October 2, 1999 (Appendix D), denying me extension of time and denying as moot a motion on disqualification of attorneys.

The motions for extension of time under F.R.C.P. 6(b), tolled the time for filing the appeal beyond the October 2, 1999, Order. Also "[I]n a civil case.....motion for rehearing or reconsideration is governed by Rule 52(b) or Rule 59, each of which allows only 10 day" (for filing motion to extend time for appeal). Browder , Infra, at ____.

Less than 60 days from October 2, 1999, I filed the motion under F.R.A.P 60(b), invoking "excusable neglect". Because I believe that I met the factors for "excusable neglect" standard, and the Federal Circuit did not challenge my contentions among them a family emergency of a key Expert Witness who I could not consult and get a declaration as to some facts, my falling ill for a short time and a medical emergency involving my father, I will not expand on that standard, but just quote the definition by the Supreme Court.

The Supreme Court's interpretation the phrase "excusable neglect" of Rule 6(b) of Federal Rules of Civil Procedure ("F.R.C.P."), was given in Pioneer Investment Services v. Brunswick Assoc. Ltd., 507 U.S. 380, (1993).

> "Under rule 6(b), where the specified period for the performance of an act has elapsed, a District Court may enlarge the period and permit the tardy act where the omission is the 'result of excusable neglect'. As with Rule . . . . , there is no indication that anything other than the commonly accepted meaning of the phrase was intended by its drafters. It is not surprising, than, that in applying Rule 6(b), the Courts of Appeals have generally recognized that 'excusable neglect' may extend to inadvertent delays. Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect, it is clear that "excusable neglect" under rule 6(b) is a somewhat 'elastic concept', and is not limited strictly to omissions caused by circumstances beyond the control of the movant."; and

"The same is true of Rule 60(b)(1), which permits courts to reopen judgements for reasons of 'mistake, inadvertence, **surprise**, or excusable neglect,' but only on motion made within one year of the judgement.". Id. at 391-393. (Emphasis added).

Interpreting District Court's Order of December 8, 1998.

The interpretation of the last Order of a district court by the Respondents and by the Federal Circuit appeal court is that the district court did not review my rule 60(b) motion and the associated reply in opposition to Respondents' motion for invalidity of most of the claims of the '904 patent.

Clearly if that is the case, the district court's judge abused his discretion when he declined to review my Fed. R. Civ. P. 60(b) motion ("rule 60(b) motion") which was timely filed and was based *inter alia* on "excusable neglect".

"[T]he standard of review of a district court's denial of a Rule 60(b) motion is abuse of discretion.". CTS Corporation v. Pihar International Corporation et al. F 221 USPQ 11 (Fed. Cir. 1984), (Citing Darlington v. Studebaker-Packard Corp., 261 F.2d 903, 905 (7th Cir.) Cert. Denied, 359 U.S. 992 (1959).

The Federal Circuit decided in Information Systems and Networks, 994 F.2d at 795. (Citing inter alia, Zawadski de Bueno v. Bueno Castro, 822 F.2d 416, 420 (3rd Cir. 1987)): "[O]ur review is guided by the well-established principals that a trial on the merit is favored over default judgement and that close cases should be resolved in favor of the party seeking to set aside default judgement".

Furthermore Federal Circuit's interpretation also calls for finding of abuse of discretion because the Rule 60(b) motion was titled "BRIEF OF MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A BRIEF OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK.". (Appendix F). Therefore it was clearly intended to be inter alia seeking the district court a leave to file that motion. Appendix E, shows the cover letter that lists the documents that I submitted for filing, and it is stamped "Received" on Dec 01, 1998. One of those documents was a Notice for the combined motion.

Seeking leave of court within a brief of a rule 60(b) motion constitutes a proper form for a pro se party, who seeks leave of court to file a reply brief to a motion for summary judgement for patent invalidity. An example that prove my point is that my previous motions for extension of time were also combined the way with a motion for leave to file them and those motions were considered by the district court Judge and they appear on the docket sheet as granted.

A second and the correct interpretation of the last Order of a district court as interpreted by me is that the district court judge did review the Fed. R. Civ. P. 60(b) motion and he indeed reviewed my reply brief in opposition to Respondents motion for summary judgement of invalidity of some claims of the '904 patent.

I rely my contention on the fact that the district court Order of Dec. 08, 1998 (Appendix B) was "Entered on the Docket" on "12-8-98", and it was signed as docketed by Mrs. "A. Rossi" the "Deputy Clerk". That is how it was mailed to me. The district court's computer printout of the docket sheet does not show this act of docketing now, but it is well known that computer stored data is susceptible to alteration due to many causes, such as glitches and errors in copying files. The Federal Circuit made an error by considering a computer stored information to be more reliable than a hard copy of paper which was hand signed by Mrs. A. Rossi. This Court should consider the hard copy of Appendix B more reliable than a computer printout.

Specifically, in the Dec. 08, 1998, Order (Appendix B, at __), the district court Judge quotes at least one large paragraph from page 13 of my forty seven pages long reply brief in opposition to Respondents' summary motion for invalidity of the '904 patent. He states that he reviewed again:

> "The Court has again reviewed the decision of the Federal Circuit (which was adverse to plaintiff) and has reviewed Mr. Hazani's brief to determine of Mr. Hazani has any meritorious claim.".

Furthermore the district court Judge gives his reason for granting Respondent's summary judgement motion to be that

"Nothing asserted therein would suggest 'thoroughly justified grounds' for a change in view by the Federal Circuit.". Clearly, the Judge was referring to his August 13 ,1998 decision, in which he cites.

> "'Determinations of the ITC on patent issues and decisions of the Federal Circuit in appeals from ITC determinations are not accorded preclusive or collateral estoppel effect. Texas Instruments, Inc v. Cypress Semiconductor Corp, 90 F.3d 1558, 1568-69 (Fed. Cir. 1996) (citing cases). However, district courts are not free to ignore holdings of the Federal Circuit which bear on cases before them. IL at 1569. District courts may accord whatever persuasive value they consider justified to the prior determinations. Id. On appeal, the Federal Circuit is then free to thoroughly review the district court's decision. Id. The Federal Circuit is bound to follow its own precedents, "and to the extent [it has] previously ruled on a matter, a subsequent panel will have powerful incentives not to deviate from that holding, short of thoroughly justified grounds.'" Id. (emphasis added). (Appendix C).

Therefore it is clear that the district court Judge considered my opposition brief of December 01, 1998, against the Respondent's brief for summary judgement for invalidity of many patent claims and he issued the Order of December 08, 1998, in which he decided wrongly that my opposition brief had not any meritorious claim. That Order was timely appealed to the Federal Circuit , but the particular panel of the Federal Circuit chose to interpret the events and Orders of the district court in a way which I believe to be erroneous and wrong.

After reviewing my brief in opposition to defendants invalidity motion, the district court Judge decided wrongly that "there is no injustice" in not reviewing my yet to be filed other opposition brief on non-infringement of claim 14 of the '904 patent. By deciding so, he abused his discretion.

Given my interpretation of event and Orders of the district court, the Federal Circuit abused its discretion by not considering my appeal to review the district court's decisions, and instead treated my request for review as a petition for writ of mandamus which is judged by another standard.

Tolling the Period for Appeal from District Court.

The Federal Circuit decision is wrong is because the filing of a rule 60(b) motion to extend time due to "excusable neglect" tolls the time to file the Notice of Appeal. This is because the "excusable neglect" provision appears in Federal Rules of Appellate Procedure ("F.R.A.P.") rule 4(a)(5). Because my F.R.C.P. 's rule 60(b) was timely filed in less than 60 days from the last district court Order of October 02, 1998. Advanced Estimating Systems Inc. v. Riney. 77 F.3d 1322, 38 USPQ2d 1208 (11th Cir. 1996). "[Despite the thirty-day time restriction mandated by Rule 4, the running of the appeal period may be tolled by filing one of the motions listed in Rule 4, including a Rule 59 or 60 motion". Id, 38 USPQ2d 1209. The advanced Estimation Systems Inc., Supra at 1210, opinion cites cases from eight federal appeal courts in other federal appeal circuits including Candela Laser Corp. v. Cynosure, Inc., 43 F.3d 1485, 1994 WL 702194,*2 (Fed. Cir. 1994) (unpublished opinion) ("applying Pioneer excusable neglect analysis to Rule 4(a)(5) excusable neglect)". The Federal Circuit appeal court panel is clearly in conflict with eight other federal appeal courts on the issue of tolling time for filing an appeal.

In Browder v. Director, Department of Correction of Illinois, 434 U.S. 257, FootNote 7, the Supreme Court stated clearly that "A timely appeal may be taken under Fed. Rule Appl Proc. 4(a) from a ruling on a Rule 60(b) motion.". (calculating more than ninety days extension of time from October 21 to January 26).

It is interesting to note that while the Respondents argued that the district court case was closed on August 21, 1998, OKI Respondent's local counsel sent a letter to Judge Lifland long after that date demanding the he will issue an Order regarding my still pending appeal of Magistrate Judge's Order on my motion to change of venue. OKI's counsel was appointed by the Court to manage the correspondence between the Court and the parties in February 1998. The Order of Sept. 11, 1998 (Appendix G) resulted therefrom. Since the letter does not appear on the docket sheet, I am asking this Court to permit me to submit a copy of it.

REASONS FOR GRANTING THE WRIT

It is clear than a great injustice occurred by the Order of the Federal Circuit which is on appeal. The Federal Circuit miscalculated the time for filing a Notice of Appeal from from district court's final Order, so its calculations of time are in conflict with the vast majority of the other federal circuit court of the United States. The Federal Circuit should be ordered to apply the correct law as do most of the other circuit in calculating the tolling time introduced be filing motions to extent .me under F.R.C.P. 6(b), motions for reconsideration and motions to extend time under F.R.C.P. 60(b). Thereby, consider my appeal from the district court of New Jersey properly as a request of review and not as a writ of mandamus.

The Federal Circuit misapplied the law and abused its discretion by not reviewing my appeal on the merits of the case with respect to the following district court Orders which should be reviewed by the Federal Circuit: An Order on invalidity of patent claims (Appendix B, which incorporated Appendix C) for which the Federal Circuit should rule if my opposition brief had meritorious claim, an Order dismissing as moot my motion to disqualify Respondent's counsel (Appendix D), and Order dismissing my appeal of Magistrate Judge's Order denying my motion to change venue and transfer (Appendix G). The Federal Circuit should be ordered to consider my appeal of these district court Orders on the merit and on the record from the district court.

CONCLUSION

For the reasons above stated the petition for writ of certiorari should be granted.

Respectfully Submitted.

Emanuel Hazani

Emanuel Hazani Date: August 12, 1999.

APPENDIX A: Decision of the U.S. Federal Appeal Court

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable. It is a public order.

United States Court of Appeals for the Federal Circuit

99-1188

EMANUEL HAZANI,

Plaintiff-Appellant

v.

OKI ELECTRIC INDUSTRY CO. LTD., OKI AMERICA, INC., SAMSUNG GROUP, SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR, INC., MITSUBISHI ELECTRIC CORPORATION, MITSUBISHI ELECTRONICS AMERICA, INC., NEC CORPORATION, and NEC ELECTRONICS, INC.,

Defendants-Appellees.

In RE EMANUEL HAZANI
Petitioner

ON MOTION AND ON PETITION FOR WRIT OF MANDAMUS

Before CLEVENGER, RADER, AND BRYSON, Circuit Judges.

RADER, Circuit Judge.

ORDER

Emanuel Hazani moves for leave to file an overlong brief. Oki Electric Industry Co. Ltd. et al. oppose. Hazani moves for leave to

file a reply, with reply attached. Oki moves to dismiss Hazani's appeal as untimely. Hazani opposes. Hazani moves for an extension of time to file his brief, until 14 days after the court decides his motion to file an overlong brief. Hazani requests that that Micron Technology, Inc. and Micron Semiconductor (Micron) be removed from the caption as Micron is not an appellee. The court treats the appeal and the other matters presented as a petition for writ of mandamus.

On May 4, 1998, Oki filed summary judgment motions of noninfringement and invalidity in the United States District Court for the District of New Jersey. Hazani moved multiple times for extensions of time to respond. In the orders granting the second and third motions for extensions, the district court warned Hazani that failure to respond within the time granted would result in the district court treating the motions for summary judgment as unopposed. Hazani's fourth extension motion, filed after the time granted in the third order had passed, was denied by the district court.

On August 13, 1998, the district court granted Oki's unopposed motions for summary judgment of noninfringement and invalidity. On August 21, the case was closed. After the district court's ruling, Hazani filed motions to extend the time to file a motion for reconsideration and various other motions. The district court denied the motions and, finally, on September 17, 1998, issued an order directing that no further submissions would be accepted absent leave of the court. The district court also reminded Hazani that he had limited time to appeal the final judgment entered by the district court.

On December 1, 1998, Hazani, without seeking leave of court, submitted an opposition to the summary judgment motion and a Fed. R. Civ. P. 60(b) motion. On December 8, 1998, the district court noted that "no leave was sought or granted" and stated that "there is no injustice in not reviewing Mr. Hazani's grossly untimely papers. The case remains closed." The district court's docket sheet

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. The summary judgment motions were filed after this court affirmed an International Trade Commission determination relating to noninfringement and invalidity of the same patent. Hazani v. ITC, 126 F.3d 1473 (Fed. Cir. 1997).

reflects that neither Hazani's submissions nor the district court's order was entered on the docket.

Hazani filed a notice of appeal on January 7, 1999. In the notice, Hazani sought review of seemingly all district court orders that were adverse to him, including the December 8, 1998 order.

Because Hazani's appeal is untimely with respect to all orders relating to the merits of his case, we treat his request for review as a petition for writ of mandamus. Similarly, we treat Hazani's request for review of the December 8 order refusing to file his submissions as a petition for writ of mandamus to direct the district court to file and rule on his papers.

A writ of mandamus will issue only in exceptional circumstances to correct a clear abuse of discretion or usurpation of judicial power by a trial court. In re Calmar Inc., 854 F.2d 461, 464 (Fed. Cir. 1988). A party who seeks a writ bears the burden of proving that it has no other means of attaining the relief desired, Mallard v. U.S. Dist. Court for the Southern Dist. of Iowa, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is "clear and indisputable." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). A litigant does not have a clear and indisputable right to a particular result in matters committed to the discretion of the district court. Id.

To the extent that Hazani seeks review of any orders entered before December 8,1998, the court declines to disturb them. Hazani failed to timely appeal from the final judgment and failed to file any postjudgment motions that would have tolled the time to appeal. This court will not "engage in extraordinary review by mandamus in aid of its jurisdiction . . . when it can exercise the same review by a contemporaneous ordinary appeal." Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 8, n.6 (1983).

With regard to the district court's December 8,1998 order, Hazani has not shown that his right to a writ is clear and indisputable. The district court's refusal to file or consider Hazani's opposition to the summary judgment motions or his Rule 60(b) motion, without an accompanying motion for leave to file, clearly does not constitute an abuse of discretion. The district court had previously granted Hazani three extensions of time to file an opposition to the summary judgment motions, yet Hazani failed to submit a timely opposition. Moreover, Hazani, despite the district

court's instructions, failed to request leave of court before submitting the untimely opposition to the summary judgment motions and the Rule 60(b) motion. "The goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests." Whitaker v. Super. Court of California. San Francisco County, 514 U.S. 208, 210 (1995) (directing Clerk of Court not to accept any further petitions for certiorari filed by pro se petitioner in noncriminal cases). The district court's refusal to file or consider Hazani's opposition to the summary judgment motions or his Rule 60(b) motion, without a motion for leave to file, was not an abuse of discretion.

Accordingly,

IT IS ORDERED THAT:

(1) Hazani's petition for a writ of mandamus is denied.

(2) The parties' motions are moot.

(3) The revised official caption is reflected above.

FOR THE COURT

MAY 14, 1999

Date

s/_____
Randall R. Rader
Circuit Judge

cc: Emanuel Hazani,
Cecilia H. Gonzalez, Esq.
J. Frank Osha, Esq.
Henry A. Petri, Jr., Esq.
Matthew D. Powers, Esq.
Robert M. Taylor, Jr., Esq.
S13

FILED

U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
MAY 14 1999

JAN HORBALY
CLERK

99-1198

APPENDIX B:
Memorandum And Order of District Court Judge John Lifland. "Entered on the Docket" December 8, 1998.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMANUEL HAZANI and PATENT ENFORCEMENT FUND, INC., Plaintiffs,	: CIVIL ACTION NO. 95-0134 (ICL)
v.	: MEMORANDUM AND ORDAER
OKI ELECTRIC INDUSTRY: CO., LTD., ET AL.,	: FILED DEC 4 1998 AT 8:30.....M WILLIAM T. WALSH CLERK
CO., LTD., et al.,	: ENTERED ON THE DOCKET ON 12-8-98
Defendants.	: WILLIAM T. WALSH, CLERK By S/_____ A. ROSSI (DEPUTY CLERK)

LIFLAND, District Judge

This Court granted defendants' motions for summary judgement in a Memorandum and Order filed August I 1, 1998. The Court considered the motions as unopposed because Mr. Hazani failed to submit briefs despite three extensions and two adjournments of the return date. The case was closed by the Clerk's office shortly thereafter. Plaintiff Hazani has now submitted to the Clerk's of Office briefs and supporting materials in support of his belated opposition to defendants' motions for summary judgment. No leave of court was sought or granted.

The Court is mindful of Mr. Hazani's pro- se status and whether there was any fundamental unfairness in the procedure of the Court. The Court has again reviewed the decision of the Federal Circuit (which was adverse to plaintiff) and has reviewed Mr. Hazani's brief to determine if Mr. Hazani has any sort of meritorious claim.

In its Memorandum and Order filed August 11, 1998, the Court stated: "Though the Federal Circuit's rulings with respect to the invalidity of the texturing and chemically engraved claims and the non-infringement of Claim 14 are not entitled to preclusive effect, plaintiff does not assert, and the record does not disclose, any grounds which would justify this Court's deviation from those rulings." (p. 9). The Court then stated that it was persuaded by the Federal Circuit's analysis. After a review of Mr. Hazani's Opposition Brief, the Court determines that Mr. Hazani presents no grounds to justify this Court's deviation from the Federal Circuit's rulings. For example, Mr. Hazani's principal, and perhaps sole, argument on validity is as follows:

> As I contended above the record of evidence before the ITC and before the Federal Circuit was maliciously deprived by lawyers who purported to be my attorneys, in order to defeat my cause. In the past the Federal Circuit reversed its own earlier claim interpretation of the same patent as a question of law when the stage of proceedings changed .... Therefore, in light of the facts newly presented to this court, and the new contentions regarding the law, the decisions of the ITC and the Federal Circuit in Hazani, supra, should be given no weight.

Opp. Br. at 13. Nothing asserted therein would suggest "thoroughly justified grounds" for a change of view by the Federal Circuit. Accordingly, there is no injustice in not reviewing Mr. Hazani's grossly untimely papers.

The case remains closed.

s/_____
John C. Lifland
U.S. District Judge

APPENDIX C: Selected Portions of District Court's Order of 8-13-98, Marked "*" are redacted.

NOT FOR PUBLICATION

FILED AUG 11 1998
AT 8:30.....M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMANUEL HAZANI and PATENT ENFORCEMENT FUND, INC., Plaintiffs,	:	CIVIL ACTION NO 95-0134 (JCL)
v.	:	MEMORANDUM AND ORDER
	:	ENTERED ON THE DOCKET
OKI ELECTRIC INDUSTRY CO., LTD., et al., Defendants.	:	ON 8-13-98 WILLIAM T. WALSH, CLERK By s/_____ A. Rossi

LIFLAND, District Judge

Presently before the Court are three unopposed motions by defendants for summary judgment of invalidity and non-infringement of certain patent claims. For the reasons set forth herein, two motions will be granted. One motion will be denied as moot.

BACKGROUND

On November 24, 1992, United States Patent 5,166,904 (hereinafter the '904 patent") was issued to plaintiff Emanuel Hazani (hereinafter "plaintiff"). On December 28, 1994, plaintiff filed a complaint with the United States International Trade Commission (hereinafter the "ITC"), alleging that certain Japanese and Korean semiconductor manufacturers and their United States subsidiaries infringed various claims of the '904 patent. In early 1995, the ITC commenced an investigation of plaintiff' s complaint, naming the

foreign manufacturers and their American distributors as respondents (hereinafter the "ITC respondents"). On January 11, 1995, plaintiff filed this patent infringement action, naming the ITC respondents as defendants. Plaintiff's instant complaint alleges that defendants' dynamic random access memory devices infringe various claims of the '904 patent. The same patent and identical memory devices at issue in the ITC proceeding are at issue in this action.

*

*

On August 18, 1995, NEC Corporation, NEC Electronics, Inc. (hereinafter "'NEC"), Samsung Group, Samsung Electronics America, Inc., Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc. (hereinafter "Samsung"), Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc. (hereinafter "Mitsubishi") and OKI filed a joint motion for summary determination that the '904 patent claims 1, 2, 4-13, 15-17 and 22-25 (hereinafter the "texturing claims") were anticipated by prior art and therefore invalid. On September 12, 1995, the ALJ granted the motion, holding that the texturing claims are invalid as anticipated by United States Patent 4,758,986 (hereinafter the "Kuo '986 patent") because every limitation of the claims is found in the Kuo '986 patent, either explicitly or inherently (hereinafter "Order 59").

*

*

On May 4, 1998, in light of the Federal Circuit's decision, defendants filed: (1) a joint motion for summary judgment of invalidity of the texturing and chemically engraved claims4 and (2) a joint motion for summary judgment of non-infringement of claim 14. The same day, OKI Defendants' invalidity motion includes all of the chemically engraved claims, with the exception of claim 21, which they do not mention. Though claim 21, like claims 18-20 and 26-28, also requires a "chemically engraved surface" and is therefore characterized as a chemically engraved claim, claim 21 is only the subject of OKI's non-infringement motion.

*

*

Determinations of the ITC on patent issues and decisions of the Federal Circuit in appeals from ITC determinations are not

accorded preclusive or collateral estoppel effect. Texas Instruments, Inc v. Cypress Semiconductor Corp, 90 F.3d 1558, 1568-69 (Fed. Cir. 1996) (citing cases). However, district courts are not free to ignore holdings of the Federal Circuit which bear on cases before them. IL at 1569. District courts may accord whatever persuasive value they consider justified to the prior determinations. Id. On appeal, the Federal Circuit is then free to thoroughly review the district court's decision. Id. The Federal Circuit is bound to follow its own precedents, "and to the extent [it has] previously ruled on a matter, a subsequent panel will have powerful incentives not to deviate from that holding, short of thoroughly justified grounds." Id.

*

*

Court will therefore follow the Federal Circuit's holding. Accordingly, the Court will grant defendants' motions for summary judgement of invalidity of the texturing claims and the chemically engraved claims and for summary judgment of non-infringement of claim 14.

*

*

Accordingly, for the foregoing reasons, IT IS on this 10th day of August 1998 ORDERED that defendants' motion for summary judgment of invalidity of claims 1, 2, 4-13, 15-20 and 22-28 of the '904 patent is granted;

IT IS FURTHER ORDERED that defendants' motion for summary judgment of noninfringement of claim 14 of the '904 patent is granted;

II IS FURTHER ORDERED that OKI's motion for partial summary judgement of noninfringement of claims 18-21 and 26-28 of the '904 patent is denied as moot.

s/_____
John C. Lifland
U.S. District Court

APPENDIX D

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMANUEL HAZANI and PATENT ENFORCEMENT FUND, INC.,
Plaintiffs,
v.
OKI ELECTRIC INDUSTRY CO., LTD., et al.,
Defendants

FILED OCT 1, 1998
AT 8:30.....M
WILLIAM T. WALSH
CLERK

CIVIL ACTION NO. 95-0134
(JCL)

MEMORANDUM AND ORDER

ENTERED
ON THE DOCKET
ON 10-2-1998
WILLIAM T. WALSH, CLERK
By s/_A. Rossi_____
(Deputy Clerk)

LIFLAND, District Judge

Presently before the Court are two applications by plaintiff Emanuel Hazani (hereinafter "plaintiff"). The first seeks an extension of time to file a motion for reconsideration of the Court's Order granting defendants' motions for summary judgment of invalidity of certain claims and for non-infringement of another claim. The second is seeks an extension of time to file a motion for reconsideration of the Magistrate Judge's Order dismissing as moot plaintiff's motion to disqualify defendant's counsel.

Plaintiff has sought and obtained several extensions of time in this action. The Court granted plaintiff three extensions of time to file opposition briefs to defendants' summary judgment motions for invalidity and non-infringement and twice adjourn the return date of those motions. However, plaintiff did not submit any opposition. The Court's Order granting defendants' summary judgment motions disposed of this case and rendered plaintiff's appeal of the Magistrate

Judge's Order moot. The Court finds no reason for granting plaintiff an extension of time to file a motion for reconsideration of the Court's decision on motions he chose not to oppose.

Accordingly, for the reasons set forth herein, IT IS on this 1st day of October 1998 ORDERED that plaintiff's application for an extension of time to file a motion for reconsideration of the court's Order granting defendants' motions for summary judgement of invalidity of certain claims and for non-infringement of another claim returnable on October 13, 1998 is denied;

IT IS FURTHER ORDERED that plaintiff's application for an extension of time to file a motion for reconsideration of the Magistrate Court's Order dismissing as moot plaintiff's motion to Disqualify defendant's counsel returnable on October 13, 1998 is denied.

s/_____
John C. Lifland
U.S. District Judge

APPENDIX E

RECEIVED
WILLIAM T. WALSH, CLERK
1998 DEC - P 1:33

Emanuel Hazani
1210 Sesame Drive
Sunnyvale, CA 94087
(408) 737-1877

November 29, 1998

Mr. William T. Walsh, Clerk
United States District Court
Martin Luther King, Jr.
Federal Building and Court House,
50 Walnut Street
Newark, NJ 07101-0419

Re: Hazani and Patent Enforcement Fund, Inc. v
Oki Electric Co., Ltd. et al., Civil No. 95-134 (JCL).

Dear Mr. Walsh,

Enclosed herein please find for filing two copies of the following:

1) BRIEF OF MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A BRIEF OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK.

(2) NOTICE OF MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A NOTICE OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK.

3) Proposed Order granting MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A MOTION OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK

4) Declaration of Emanuel Hazani dated November 29, 1998.

In compliance with F.R.C.P., the above documents were deposited with the U.S.P.S. Express Mail, in order to be accorded today's filing date.

Please return the extra copy in the envelop provided.

Sincerely,

Emanuel Hazani
Plaintiff, *Pro se.*

encl.

APPENDIX F

Emanuel Hazani
1210 Sesame Drive,
Sunnyvale, CA 94087
(408) 737-1877
Plaintiff, *pro se.*

Return Date: December 24, 1998

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMANUEL HAZANI and PATENT ENFORCEMENT FUND, INC.,	) CIVIL ACTION) NO. 95-134 (JCL)
Plaintiffs, v.	)
OKI ELECTRIC INDUSTRY CO., LTD. OKI AMERICA, INC., SAMSUNG GROUP, SAMSUNG ELECTRONIC AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR, INC., HITACHI LTD., HITACHI AMERICA, LTD., MITSUBISHI ELECTRIC CORPORATION, MITSUBISHI ELECTRONICS AMERICA, INC., NEC CORPORATION, NEC ELECTRONICS, INC., HYUNDAI ELECTRONICS INDUSTRIES CO., LTD., HYUNDAI ELECTRONICS AMERICA, INC., MICRON TECHNOLOGY, INC., MICRON SEMICONDUCTOR, INC.,	)
defendants.	)

BRIEF OF MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A BRIEF OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK.

BRIEF OF MOTION OF PLAINTIFF HAZANI FOR LEAVE TO FILE AND A BRIEF OF MOTION FOR EXTENSION OF TIME AND TO SET ASIDE CERTAIN ORDERS OF THE COURT AND ACTION OF THE CLERK.

I. INTRODUCTION

Pursuant to Rule 60(b)(1), and Rule 6(b) of the Federal Rules of Civil Procedures ("F.R.C.P"), I pro se plaintiff Emanuel Hazani hereby motion for reconsideration, to enlarge time to file reply briefs in opposition to defendants' motions for summary judgements, and to set aside and vacate the Orders of the court that were issued by Judge John C. Lifland and entered on August 13, 1998, and September 11, 1998, and September 17, 1998, and October 02, 1998, and also to set aside the Order of Magistrate Judge Stanley R. Chesler, entered August 17, 1998, to dismiss as moot my motion of July 02, 1998, to disqualify defendants' counsel. (Exhibit-1, shows a copy of all said Orders together). The delay in filing this motion for reconsideration and to set aside said five Court Orders is excusable for the reasons detailed below and also the delay for filing replies in opposition to defendants motions for summary judgement is also believed to be excusable.

In the alternative the Court can consider this motion under Rule 55(c) of the Federal Rules of Civil Procedures ("F.R.C.P"), and set aside the above mentioned Orders for "good cause shown", however if the Court does not find this motion proper to consider under Rule 55(c) of the F.R.C.P., or should the Court deny any portion of this motion under Rule 55(c), I am respectfully requesting that this motion be considered under Rule 60(b)(1) and Rule 6(b) as mentioned above.

Also this motion comes to respectfully request from the Court set aside Taxation Of Cost action of the Clerk of Court, which was entered on November 04, 1998, which Clerk action should be set aside under this Rule 55(c), or alternatively under Rule 60(b)(1).

NOT FOR PUBLICATION

FILED SEP 10, 1998
AT 8:30.....M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMANUEL HAZANI and PATENT ENFORCEMENT FUND, INC., Plaintiffs,	:	CIVIL ACTION NO. 95-0134 (JCL)
v.	:	MEMORANDUM AND ORDER
OKI ELECTRIC INDUSTRY CO., LTD., et al., Defendants	:	ENTERED ON THE DOCKET ON 9-11-1998 WILLIAM T. WALSH, CLERK By s/_A. Rossi_____ (Deputy Clerk)

LIFLAND, District Judge

Presently before the Court are two applications by plaintiff Emanuel Hazani (hereinafter "plaintiff"). The first seek an extension of time to file a motion for reconsideration of the Court's Order granting defendants' motions for summary judgment of invalidity of certain claims and for non-infringement of another claim. The second is plaintiff's appeal from the Magistrate Judge's Order denying plaintiff's motion for transfer of venue.

Plaintiff has sought and obtained several extensions of time in this action. The Court granted plaintiff three extensions of time to file opposition briefs to defendants' summary judgment motions for invalidity and non-infringement and twice adjourned the return date of those motions. However, plaintiff did not submit any opposition. The Court's Order granting defendants' summary judgment motions disposed of this case and rendered plaintiff's appeal of the Magistrate Judge's Order moot. The Court finds no reason for granting plaintiff

an extension of time to file a motion for reconsideration of the Court's decision on motions he chose not to oppose.

Accordingly, for the reasons set forth herein, IT IS on this 10th day of September 1998 ORDERED that plaintiff's application for an extension of time to file a motion for reconsideration is denied;

IT IS FURTHER ORDERED that plaintiff's appeal from the Magistrate Judge's Order denying plaintiff's motion for transfer of venue is moot.

John C. Lifland

U.S. District Judge